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Attorneys for Defendant Tesla, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OWEN DIAZ,

Plaintiff,

v.

TESLA, INC. d/b/a TESLA MOTORS, INC.,

Defendant.

Case No. 3:17-cv-06748-WHO

**DEFENDANT TESLA, INC.'S NOTICE
OF EVIDENCE RE: INCIDENT
INVOLVING MICHAEL WHEELER**

Trial Date: March 27, 2023
Time: 8:30 a.m.
Place: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

1 Pursuant to this Court’s February 27, 2023 Minute Order (Dkt. 409 at 2), Defendant Tesla,
 2 Inc. respectfully submits this Notice of Evidence regarding Plaintiff Owen Diaz’s awareness of an
 3 alleged incident of harassment involving Michael Wheeler.

4 For evidence that Mr. Diaz was unaware of or unharmed by the incident at the time he filed
 5 his original complaint on October 13, 2017, Tesla refers the Court to Mr. Diaz’s original complaint,
 6 which identified several specific incidents of alleged harassment but made no mention of the alleged
 7 incident involving Mr. Wheeler. *See* Dkt. 1-2, ¶¶ 34-35 (allegations regarding racial slurs by other
 8 unnamed employees); ¶¶ 36-37 (allegations about “Conveyance Supervisor Robert”); ¶ 39
 9 (allegation about overhearing racial slur directed to his son); ¶¶ 42-47 (allegations about drawings);
 10 ¶¶ 53-60 (allegations about Martinez elevator incident); *see also* Dkt. 57 (Mr. Diaz’s amended
 11 complaint which similarly omits allegations of incident involving Mr. Wheeler).

12 For evidence that Mr. Diaz had very limited knowledge about the incident, Tesla refers the
 13 Court to his deposition testimony in which he repeatedly refers to Mr. Wheeler’s superior knowledge
 14 of what happened and how Mr. Wheeler felt about it, and in which he does not testify that he was
 15 aware of the incident or believed it was racially motivated at the time it occurred or at any time
 16 before filing this lawsuit. *See* Declaration of Daniel C. Posner, March 3, 2023, Ex. A at 208:10-14;
 17 209:2-16; 210:7-12, 20-25; 211:3-4, 11-20; 212:3-4, 7-11.

18 For evidence that Michael Wheeler was unaware whether the incident was racially
 19 motivated, Tesla refers the Court to his deposition testimony. *Id.* Ex. B at 57:8-12 (“Q: Do you
 20 think that the feces was put on your seat in part because you were African-American? A: I could
 21 assume that, but I can’t say for sure. So I will not say that. I will say it was an act against me, but
 22 it could have been anyone.”).

23 Tesla is unaware of any testimony that shows Mr. Diaz was aware of or harmed by the
 24 incident during the time he worked at Tesla’s Fremont factory, that he believed the incident was
 25 racially motivated during the time he worked at the factory, or that Mr. Wheeler had any non-
 26 speculative basis to determine the incident was racially motivated. *See, e.g., State Farm Mut. Auto.*
 27 *Ins. Co. v. Campbell*, 538 U.S. 408, 422-23 (2003) (“A defendant’s dissimilar acts, independent
 28 from the acts upon which liability was premised, may not serve as the basis for punitive damages.

1 A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory
2 individual or business.”).

3
4 DATED: March 3, 2023

By: /s/ Daniel C. Posner

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